

**UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

COMMODITIES FUTURES
TRADING COMMISSION,

Plaintiffs,

v.

MARCUS TODD BRISCO, YAS
CASTELLUM LLC, YAS CASTELLUM
FINANCIAL LLC, TIN QUOC TRAN,
FRANCISCO STORY, FREDIRICK
SAFRANK, a/k/a TED SAFRANKO,
SAEG CAPITAL GENERAL
MANAGEMENT LP, and MICHAEL
SHANNON SIMS,

Defendant.

CIVIL ACTION NO. 4:23-CV-336

**DEFENDANT MICHAEL SIMS
ANSWER AND AFFIRMATIVE DEFENSES TO COMPLAINT**

Pursuant to Fed. R. Civ. P. 8 and 15, Defendant Michael Sims files his Answer and Affirmative Defenses to the Complaint filed on January 31, 2023 (ECF No. 1), and states:

ANSWER

Summary

1. Denied.
2. Denied.
3. Without knowledge, therefore denied.
4. Without knowledge, therefore denied.
5. Without knowledge, therefore denied.
6. Denied.

7. Without knowledge, therefore denied.
8. Without knowledge, therefore denied.
9. Denied.
10. Denied.

Jurisdiction and Venue

11. Admitted for jurisdiction and venue purposes only.
12. Admitted for jurisdiction and venue purposes only.
13. Admitted for jurisdiction and venue purposes only.

The Parties

14. Admitted.
15. Without knowledge, therefore denied.
16. Without knowledge, therefore denied.
17. Without knowledge, therefore denied.
18. Without knowledge, therefore denied.
19. Without knowledge, therefore denied.
20. Without knowledge, therefore denied.
21. Without knowledge, therefore denied.
22. Admitted.

Facts

23. Without knowledge, therefore denied.
24. Without knowledge, therefore denied.
25. Without knowledge, therefore denied.

26. Without knowledge, therefore denied.
27. Without knowledge, therefore denied.
28. Without knowledge, therefore denied.
29. Without knowledge, therefore denied.
30. Without knowledge, therefore denied.
31. Admitted that neither Sims nor Purported Trading Firm 1 made any trades for YAS 1 or any customers during the relevant period, otherwise without knowledge therefore denied.
32. Without knowledge, therefore denied.
33. Without knowledge, therefore denied.
34. Denied.
35. Denied.
36. Admitted that Sims provided Brisco with wire instructions, without knowledge therefore denied as to all other parts.
37. Admitted that Sims provided Brisco with wire instructions, without knowledge therefore denied as to all other parts.
38. Denied.
39. Denied.
40. Without knowledge, therefore denied.
41. Admitted that neither Sims nor Purported Trading Firm 1 owned or controlled the entities or accounts referenced in the complaint, otherwise without knowledge therefore denied.
42. Without knowledge, therefore denied.

- 43. Denied.
- 44. Without knowledge, therefore denied.
- 45. Without knowledge, therefore denied.
- 46. Without knowledge, therefore denied.
- 47. Without knowledge, therefore denied.
- 48. Without knowledge, therefore denied.
- 49. Without knowledge, therefore denied.
- 50. Without knowledge, therefore denied.
- 51. Without knowledge, therefore denied.
- 52. Without knowledge, therefore denied.
- 53. Without knowledge, therefore denied.
- 54. Without knowledge, therefore denied.
- 55. Without knowledge, therefore denied.
- 56. Without knowledge, therefore denied.
- 57. Without knowledge, therefore denied.
- 58. Without knowledge, therefore denied.
- 59. Without knowledge, therefore denied.
- 60. Without knowledge, therefore denied.
- 61. Without knowledge, therefore denied.
- 62. Without knowledge, therefore denied.
- 63. Without knowledge, therefore denied.
- 64. Without knowledge, therefore denied.
- 65. Without knowledge, therefore denied.

- 66. Without knowledge, therefore denied.
- 67. Without knowledge, therefore denied.
- 68. Without knowledge, therefore denied.
- 69. Without knowledge, therefore denied.
- 70. Without knowledge, therefore denied.
- 71. Without knowledge, therefore denied.
- 72. Without knowledge, therefore denied.
- 73. Without knowledge, therefore denied.
- 74. Without knowledge, therefore denied.
- 75. Without knowledge, therefore denied.
- 76. Without knowledge, therefore denied.
- 77. Without knowledge, therefore denied.
- 78. Without knowledge, therefore denied.
- 79. Without knowledge, therefore denied.
- 80. Without knowledge, therefore denied.
- 81. Without knowledge, therefore denied.
- 82. Without knowledge, therefore denied.
- 83. Without knowledge, therefore denied.
- 84. Due to Plaintiff's redactions, Defendant lacks sufficient knowledge to form an opinion regarding the allegations included in this paragraph, therefore Defendant denies same.
- 85. Without knowledge, therefore denied.
- 86. Without knowledge, therefore denied.

87. Without knowledge, therefore denied.
88. Without knowledge, therefore denied.
89. Without knowledge, therefore denied.
90. Without knowledge, therefore denied.
91. Without knowledge, therefore denied.
92. Without knowledge, therefore denied.
93. Without knowledge, therefore denied.
94. Without knowledge, therefore denied.
95. Denied as to the reference to Defendant Sims, otherwise without knowledge, therefore denied.
96. Without knowledge, therefore denied.
97. Without knowledge, therefore denied.
98. Without knowledge, therefore denied.
99. Without knowledge, therefore denied.
100. Without knowledge, therefore denied.
101. Without knowledge, therefore denied.
102. Without knowledge, therefore denied.
103. Without knowledge, therefore denied.
104. Without knowledge, therefore denied.
105. Without knowledge, therefore denied.
106. Without knowledge, therefore denied.
107. Without knowledge, therefore denied.
108. Without knowledge, therefore denied.

- 109. Without knowledge, therefore denied.
- 110. Without knowledge, therefore denied.
- 111. Without knowledge, therefore denied.
- 112. Without knowledge, therefore denied.
- 113. Without knowledge, therefore denied.
- 114. Without knowledge, therefore denied.
- 115. This paragraph does not contain a factual allegation requiring a response.
- 116. This paragraph does not contain a factual allegation requiring a response.
- 117. This paragraph does not contain a factual allegation requiring a response.
- 118. This paragraph does not contain a factual allegation requiring a response.
- 119. Without knowledge, therefore denied.
- 120. Without knowledge, therefore denied.
- 121. This paragraph does not contain a factual allegation requiring a response.
- 122. This paragraph does not contain a factual allegation requiring a response.
- 123. This paragraph does not contain a factual allegation requiring a response.
- 124. Without knowledge, therefore denied.
- 125. Without knowledge, therefore denied.
- 126. Without knowledge, therefore denied.
- 127. Without knowledge, therefore denied.
- 128. Without knowledge, therefore denied.
- 129. Without knowledge, therefore denied.
- 130. Without knowledge, therefore denied.
- 131. Without knowledge, therefore denied.

- 132. Without knowledge, therefore denied.
- 133. Without knowledge, therefore denied.
- 134. Without knowledge, therefore denied.
- 135. This paragraph does not contain a factual allegation requiring a response.
- 136. This paragraph does not contain a factual allegation requiring a response.
- 137. This paragraph does not contain a factual allegation requiring a response.
- 138. This paragraph does not contain a factual allegation requiring a response.
- 139. This paragraph does not contain a factual allegation requiring a response.
- 140. This paragraph does not contain a factual allegation requiring a response.
- 141. This paragraph does not contain a factual allegation requiring a response.
- 142. This paragraph does not contain a factual allegation requiring a response.
- 143. Without knowledge, therefore denied.
- 144. Without knowledge, therefore denied.
- 145. Without knowledge, therefore denied.
- 146. Without knowledge, therefore denied.
- 147. Without knowledge, therefore denied.
- 148. Without knowledge, therefore denied.
- 149. This paragraph does not contain a factual allegation requiring a response.
- 150. Without knowledge, therefore denied.
- 151. Without knowledge, therefore denied.
- 152. Without knowledge, therefore denied.
- 153. Without knowledge, therefore denied.
- 154. Without knowledge, therefore denied.

- 155. Without knowledge, therefore denied.
- 156. Without knowledge, therefore denied.
- 157. This paragraph does not contain a factual allegation requiring a response.
- 158. This paragraph does not contain a factual allegation requiring a response.
- 159. This paragraph does not contain a factual allegation requiring a response.
- 160. Without knowledge, therefore denied.
- 161. Denied.
- 162. Denied.
- 163. This paragraph does not contain a factual allegation requiring a response.
- 164. This paragraph does not contain a factual allegation requiring a response.
- 165. This paragraph does not contain a factual allegation requiring a response.
- 166. This paragraph does not contain a factual allegation requiring a response.
- 167. This paragraph does not contain a factual allegation requiring a response.
- 168. This paragraph does not contain a factual allegation requiring a response.
- 169. This paragraph does not contain a factual allegation requiring a response.
- 170. This paragraph does not contain a factual allegation requiring a response.
- 171. This paragraph does not contain a factual allegation requiring a response.
- 172. This paragraph does not contain a factual allegation requiring a response.
- 173. Without knowledge, therefore denied.
- 174. Without knowledge, therefore denied.
- 175. Without knowledge, therefore denied.
- 176. Without knowledge, therefore denied.
- 177. Without knowledge, therefore denied.

- 178. Without knowledge, therefore denied.
- 179. Without knowledge, therefore denied.
- 180. Without knowledge, therefore denied.
- 181. Without knowledge, therefore denied.
- 182. Without knowledge, therefore denied.
- 183. Without knowledge, therefore denied.
- 184. This paragraph does not contain a factual allegation requiring a response.
- 185. This paragraph does not contain a factual allegation requiring a response.
- 186. This paragraph does not contain a factual allegation requiring a response.
- 187. This paragraph does not contain a factual allegation requiring a response.
- 188. This paragraph does not contain a factual allegation requiring a response.
- 189. Without knowledge, therefore denied.
- 190. Without knowledge, therefore denied.
- 191. Without knowledge, therefore denied.
- 192. Without knowledge, therefore denied.
- 193. Without knowledge, therefore denied.
- 194. Without knowledge, therefore denied.
- 195. This paragraph does not contain a factual allegation requiring a response.
- 196. This paragraph does not contain a factual allegation requiring a response.
- 197. Without knowledge, therefore denied.
- 198. Without knowledge, therefore denied.
- 199. Without knowledge, therefore denied.
- 200. Without knowledge, therefore denied.

201. Without knowledge, therefore denied.

RELIEF REQUESTED

These paragraphs set forth the statement of relief requested by Plaintiffs, to which no response is required. To the extent that these paragraphs require a response, Defendant denies that any of the requested relief is required and denies any allegations contained therein.

AFFIRMATIVE DEFENSES

Defendant Michael Sims, without admitting liability or the burden of proof as to Plaintiffs' allegations, asserts the following affirmative defenses as to the claims alleged in the Complaint:

First Defense: Failure To State A Claim

1. The Complaint, in whole or in part, fails to state a claim upon which relief can be granted.

Second Defense: No Likelihood Of Future Violations

2. The relief requested in this Complaint is inappropriate, in whole or in part, because the Complaint fails to allege a reasonable likelihood of future violations by Sims.

Third Defense: Statute Of Limitations

3. Plaintiffs' claim and Plaintiffs' request for civil monetary penalties are barred, in whole or by part, by an applicable statute of limitations.

Fourth Defense: Failure to Plead Fraud with Particularity

4. The Complaint, in whole or in part, fails to plead any actions of fraud with sufficient particularity pursuant to Federal Rule of Procedure 9(b).

Fifth Defense: Good Faith

5. Defendant Sims at all times acted in good faith and in the belief that his conduct conformed with all applicable laws and regulations.

Reservation of All Affirmative Defenses

6. Defendant Sims reserves the right to offer any other and additional defense that is now or may become available or appear during, or as a result of, discovery proceedings in this action.

PRAYER FOR RELIEF & DEMAND FOR JURY TRIAL

WHEREFORE, based on the foregoing, Defendant Michael Sims requests that the Court dismiss all claims in the Complaint with prejudice and award all other relief that is just and proper.

Dated: March 24, 2023

/s/ Drew Findling

Drew Findling (Admitted *Pro Hac Vice*)

Zack Kelehear (Admitted *Pro Hac Vice*)

THE FINDLING LAW FIRM

Piedmont Center

3575 Piedmont Road, Tower 15 Suite 1010

Atlanta, Georgia 30305

Telephone: (404) 460- 4500

drew@findlinglawfirm.com

zack@findlinglawfirm.com

Chante B. Westmoreland

Texas State Bar No. 24098715

Southern District of Texas ID No. 3435468

SHEPPARD, MULLIN, RICHTER &
HAMPTON, LLP

700 Louisiana Street, Suite 2750

Houston, TX 77002-2791

Telephone: (713) 431-7100

cwestmoreland@sheppardmullin.com

Counsel for Defendant Michael Sims

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above document has been served on March 24, 2023 to all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system per the Local Rules.

/s/ Chante B. Westmoreland

Chante B. Westmoreland